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11 Attorneys for Defendant, HOME DEPOT U.S.A., INC.

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION  
14

15 RODOLFO CRUZ,

16 Plaintiff,

17 v.

18 HOME DEPOT U.S.A., INC. and  
19 DOES 1 through 50, Inclusive,

20 Defendants.

Case No: 5:15-CV-02139-DOC(KKX)

**STIPULATED PROTECTIVE ORDER**

**1. PURPOSES AND LIMITATIONS**

21 Discovery in this action is likely to involve production of confidential,  
22 proprietary, or private information for which special protection from public disclosure  
23 and from use for any purpose other than prosecuting this litigation may be warranted.  
24 Accordingly, the parties hereby stipulate to and petition the Court to enter the following  
25 Stipulated Protective Order. The parties acknowledge that this Order does not confer  
26 blanket protections on all disclosures or responses to discovery and that the protection it  
27 affords from public disclosure and use extends only to the limited information or items  
28 that are entitled to confidential treatment under the applicable legal principles. The  
parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated  
Protective Order does not entitle them to file confidential information under seal; Civil

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1 Local Rule 79-5 sets forth the procedures that must be followed and the standards that  
2 will be applied when a party seeks permission from the court to file material under seal.

3  
4 **GOOD CAUSE STATEMENT**

5 Defendant HOME DEPOT U.S.A., INC.'s ("Home Depot") procedures,  
6 operations and training materials are confidential, proprietary, commercial information  
7 pertaining to the internal operations of Home Depot. Home Depot maintains that  
8 dissemination of any information learned throughout the pendency of this action could  
9 have the same negative effect on the company as dissemination of the above-referenced  
10 materials. To allow the dissemination of confidential and/or proprietary information  
11 would compromise Home Depot's market position and business interests by exposing its  
12 confidential business information to competitors and individuals outside the Home  
13 Depot corporation. Dissemination of these materials to outside parties exposes the  
14 Company's methodologies and could subject Home Depot to unwarranted criticism from  
15 competitors or other third parties. Such unwarranted criticism could have potentially  
16 damaging effects on the company's public image and affect its relationship with  
17 consumers. Further, allowing distribution of Home Depot's policies, procedures and  
18 training materials could provide potential plaintiffs and attorneys with unfair and  
19 unwarranted insight into the company's internal practices which, in turn, could hinder  
20 the company in subsequent litigation.

21 As such, this action is likely to involve trade secrets, customer and pricing lists  
22 and other valuable research, development, commercial, financial, technical and/or  
23 proprietary information for which special protection from public disclosure and from use  
24 for any purpose other than prosecution of this action is warranted. Such confidential and  
25 proprietary materials and information consist of, among other things, confidential  
26 business or financial information, information regarding confidential business practices,  
27 or other confidential research, development, or commercial information (including  
28 information implicating privacy rights of third parties), information otherwise generally

1 unavailable to the public, or which may be privileged or otherwise protected from  
2 disclosure under state or federal statutes, court rules, case decisions, or common law.

3 Accordingly, to expedite the flow of information, to facilitate the prompt  
4 resolution of disputes over confidentiality of discovery materials, to adequately protect  
5 information the parties are entitled to keep confidential, to ensure that the parties are  
6 permitted reasonable necessary uses of such material in preparation for and in the  
7 conduct of trial, to address their handling at the end of the litigation, and serve the ends  
8 of justice, a protective order for such information is justified in this matter. It is the  
9 intent of the parties that information will not be designated as confidential for tactical  
10 reasons and that nothing be so designated without a good faith belief that it has been  
11 maintained in a confidential, non-public manner, and there is good cause why it should  
12 not be part of the public record of this case.

## 13 **2. DEFINITIONS**

14 2.1 Action: Rodolfo Cruz v. Home Depot U.S.A., Inc., Case No. 5:15-CV-  
15 02139-DOC(KK) (San Bernardino County Superior Court Action No. CIVDS1508419)

16 2.2 Challenging Party: a Party or Non-Party that challenges the  
17 designation of information or items under this Order.

18 2.3 "CONFIDENTIAL" Information or Items: information (regardless of how it  
19 is generated, stored or maintained) or tangible things that qualify for protection under  
20 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause  
21 Statement.

22 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their  
23 support staff).

24 2.5 Designating Party: a Party or Non-Party that designates information or  
25 items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

26 ///

1           2.6 Disclosure or Discovery Material: all items or information, regardless of the  
2 medium or manner in which it is generated, stored, or maintained (including, among  
3 other things, testimony, transcripts, and tangible things), that are produced or generated  
4 in disclosures or responses to discovery in this matter.

5           2.7 Expert: a person with specialized knowledge or experience in a matter  
6 pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
7 expert witness or as a consultant in this Action.

8           2.8 House Counsel: attorneys who are employees of a party to this Action.  
9 House Counsel does not include Outside Counsel of Record or any other outside  
10 counsel.

11           2.9 Non-Party: any natural person, partnership, corporation, association, or  
12 other legal entity not named as a Party to this action.

13           2.10 Outside Counsel of Record: attorneys who are not employees of a party to  
14 this Action but are retained to represent or advise a party to this Action and have  
15 appeared in this Action on behalf of that party or are affiliated with a law firm which has  
16 appeared on behalf of that party, and includes support staff.

17           2.11 Party: any party to this Action, including all of its officers, directors,  
18 employees, consultants, retained experts, and Outside Counsel of Record (and their  
19 support staffs).

20           2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
21 Discovery Material in this Action.

22           2.13 Professional Vendors: persons or entities that provide litigation support  
23 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
24 demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
25 their employees and subcontractors.

26           2.14 Protected Material: any Disclosure or Discovery Material that is designated  
27 as "CONFIDENTIAL."

28       ///

1        2.15 Receiving Party: a Party that receives Disclosure or Discovery Material  
2 from a Producing Party.

### 3. SCOPE

5        The protections conferred by this Stipulation and Order cover not only Protected  
6 Material (as defined above), but also (1) any information copied or extracted from  
7 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected  
8 Material; and (3) any testimony, conversations, or presentations by Parties or their  
9 Counsel that might reveal Protected Material.

10       Any use of Protected Material at trial shall be governed by the orders of the trial  
11 judge. This Order does not govern the use of Protected Material at trial.

### 4. DURATION

12       Even after final disposition of this litigation, the confidentiality obligations  
13 imposed by this Order shall remain in effect until a Designating Party agrees otherwise  
14 in writing or a court order otherwise directs. Final disposition shall be deemed to be the  
15 later of (1) dismissal of all claims and defenses in this Action, with or without  
16 prejudice; and (2) final judgment herein after the completion and exhaustion of all  
17 appeals, rehearings, remands, trials, or reviews of this Action, including the time limits  
18 for filing any motions or applications for extension of time pursuant to applicable law.  
19  
20

### 5. DESIGNATING PROTECTED MATERIAL

21       5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
22 Party or Non-Party that designates information or items for protection under this Order  
23 must take care to limit any such designation to specific material that qualifies under the  
24 appropriate standards. The Designating Party must designate for protection only those  
25 parts of material, documents, items, or oral or written communications that qualify so  
26  
27  
28

1 that other portions of the material, documents, items, or communications for which  
2 protection is not warranted are not swept unjustifiably within the ambit of this Order.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
4 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,  
5 to unnecessarily encumber the case development process or to impose unnecessary  
6 expenses and burdens on other parties) may expose the Designating Party to sanctions.

7 If it comes to a Designating Party's attention that information or items that it  
8 designated for protection do not qualify for protection, that Designating Party must  
9 promptly notify all other Parties that it is withdrawing the inapplicable designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
11 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
12 ordered, Disclosure or Discovery Material that qualifies for protection under this Order  
13 must be clearly so designated before the material is disclosed or produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic  
16 documents, but excluding transcripts of depositions or other pretrial or trial  
17 proceedings), that the Producing Party affix at a minimum, the legend  
18 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that contains  
19 protected material. If only a portion or portions of the material on a page qualifies for  
20 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,  
21 by making appropriate markings in the margins).

22 A Party or Non-Party that makes original documents available for inspection need  
23 not designate them for protection until after the inspecting Party has indicated which  
24 documents it would like copied and produced. During the inspection and before the  
25 designation, all of the material made available for inspection shall be deemed  
26 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants  
27 copied and produced, the Producing Party must determine which documents, or portions  
28 thereof, qualify for protection under this Order. Then, before producing the specified

1 documents, the Producing Party must affix the "CONFIDENTIAL legend" to each page  
 2 that contains Protected Material. If only a portion or portions of the material on a page  
 3 qualifies for protection, the Producing Party also must clearly identify the protected  
 4 portion(s) (e.g., by making appropriate markings in the margins).

5 (b) for testimony given in depositions that the Designating Party identify the  
 6 Disclosure or Discovery Material on the record, before the close of the deposition all  
 7 protected testimony.

8 (c) for information produced in some form other than documentary and for  
 9 any other tangible items, that the Producing Party affix in a prominent place on the  
 10 exterior of the container or containers in which the information is stored the legend  
 11 "CONFIDENTIAL." If only a portion or portions of the information warrants protection,  
 12 the Producing Party, to the extent practicable, shall identify the protected portion(s).

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
 14 to designate qualified information or items does not, standing alone, waive the  
 15 Designating Party's right to secure protection under this Order for such material. Upon  
 16 timely correction of a designation, the Receiving Party must make reasonable efforts to  
 17 assure that the material is treated in accordance with the provisions of this Order.

## 18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
 20 designation of confidentiality at any time that is consistent with the Court's Scheduling  
 21 Order.  
 22

23 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
 24 resolution process under Local Rule 37.1 et seq.

25 6.3 The burden of persuasion in any such challenge proceeding shall be on the  
 26 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,  
 27 to harass or impose unnecessary expenses and burdens on other parties) may expose  
 28 the Challenging Party to sanctions. Unless the Designating Party has waived or

1 withdrawn the confidentiality designation, all parties shall continue to afford the  
2 material in question the level of protection to which it is entitled under the Producing  
3 Party's designation until the Court rules on the challenge.

4  
5 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

6 **7.1 Basic Principles.** A Receiving Party may use Protected Material that is  
7 disclosed or produced by another Party or by a Non-Party in connection with this  
8 Action only for prosecuting, defending, or attempting to settle this Action. Such  
9 Protected Material may be disclosed only to the categories of persons and under the  
10 conditions described in this Order. When the Action has been terminated, a Receiving  
11 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

12 Protected Material must be stored and maintained by a Receiving Party at a  
13 location and in a secure manner that ensures that access is limited to the persons  
14 authorized under this Order.

15 **7.2 Disclosure of "CONFIDENTIAL" Information or Items.** Unless  
16 otherwise ordered by the court or permitted in writing by the Designating Party, a  
17 Receiving Party may disclose any information or item designated "CONFIDENTIAL"  
18 only to:

19 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as  
20 employees of said Outside Counsel of Record to whom it is reasonably necessary to  
21 disclose the information for this Action;

22 (b) the officers, directors, and employees (including House Counsel) of the  
23 Receiving Party to whom disclosure is reasonably necessary for this Action;

24 (c) Experts (as defined in this Order) of the Receiving Party to whom  
25 disclosure is reasonably necessary for this Action and who have signed the  
26 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

27 (d) the court and its personnel;

28 (e) court reporters and their staff;

1 (f) professional jury or trial consultants, mock jurors, and Professional  
2 Vendors to whom disclosure is reasonably necessary for this Action and who have  
3 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

4 (g) the author or recipient of a document containing the information or a  
5 custodian or other person who otherwise possessed or knew the information;

6 (h) during their depositions, witnesses, and attorneys for witnesses, in the  
7 Action to whom disclosure is reasonably necessary provided: (1) the deposing party  
8 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not  
9 be permitted to keep any confidential information unless they sign the  
10 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed  
11 by the Designating Party or ordered by the court. Pages of transcribed deposition  
12 testimony or exhibits to depositions that reveal Protected Material may be separately  
13 bound by the court reporter and may not be disclosed to anyone except as permitted  
14 under this Stipulated Protective Order; and

15 (i) any mediator or settlement officer, and their supporting personnel,  
16 mutually agreed upon by any of the parties engaged in settlement discussions.

17  
18 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
19 **PRODUCED IN OTHER LITIGATION**

20 If a Party is served with a subpoena or a court order issued in other litigation that  
21 compels disclosure of any information or items designated in this Action as  
22 "CONFIDENTIAL," that Party must:

23 (a) promptly notify in writing the Designating Party. Such notification shall  
24 include a copy of the subpoena or court order;

25 (b) promptly notify in writing the party who caused the subpoena or order to  
26 issue in the other litigation that some or all of the material covered by the subpoena or  
27 order is subject to this Protective Order. Such notification shall include a copy of this  
28 Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as "CONFIDENTIAL" before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

**9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION**

The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(a) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

1 (3) make the information requested available for inspection by the Non-  
2 Party, if requested.

3 (b) If the Non-Party fails to seek a protective order from this court within 14  
4 days of receiving the notice and accompanying information, the Receiving Party may  
5 produce the Non-Party's confidential information responsive to the discovery request. If  
6 the Non-Party timely seeks a protective order, the Receiving Party shall not produce any  
7 information in its possession or control that is subject to the confidentiality agreement  
8 with the Non-Party before a determination by the court. Absent a court order to the  
9 contrary, the Non-Party shall bear the burden and expense of seeking protection in this  
10 court of its Protected Material.

#### 11 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

12 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
13 Protected Material to any person or in any circumstance not authorized under this  
14 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing  
15 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve  
16 all unauthorized copies of the Protected Material, (c) inform the person or persons to  
17 whom unauthorized disclosures were made of all the terms of this Order, and (d) request  
18 such person or persons to execute the "Acknowledgment and Agreement to Be Bound"  
19 that is attached hereto as Exhibit A.  
20

#### 21 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR** 22 **OTHERWISE PROTECTED MATERIAL**

23 When a Producing Party gives notice to Receiving Parties that certain  
24 inadvertently produced material is subject to a claim of privilege or other protection, the  
25 obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
26 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure  
27 may be established in an e-discovery order that provides for production without prior  
28

1 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
 2 parties reach an agreement on the effect of disclosure of a communication or information  
 3 covered by the attorney-client privilege or work product protection, the parties may  
 4 incorporate their agreement in the stipulated protective order submitted to the court.

## 5 6 **12. MISCELLANEOUS**

7 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
 8 person to seek its modification by the Court in the future.

9 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
 10 Protective Order no Party waives any right it otherwise would have to object to  
 11 disclosing or producing any information or item on any ground not addressed in this  
 12 Stipulated Protective Order. Similarly, no Party waives any right to object on any ground  
 13 to use in evidence of any of the material covered by this Protective Order.

14 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected  
 15 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
 16 under seal pursuant to a court order authorizing the sealing of the specific Protected  
 17 Material at issue. If a Party's request to file Protected Material under seal is denied by  
 18 the court, then the Receiving Party may file the information in the public record unless  
 19 otherwise instructed by the court.

## 20 21 **13. FINAL DISPOSITION**

22 After the final disposition of this Action, as defined in paragraph 4, within 60  
 23 days of a written request by the Designating Party, each Receiving Party must return all  
 24 Protected Material to the Producing Party or destroy such material. As used in this  
 25 subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
 26 summaries, and any other format reproducing or capturing any of the Protected Material.  
 27 Whether the Protected Material is returned or destroyed, the Receiving Party must  
 28 submit a written certification to the Producing Party (and, if not the same person or

1 entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category,  
2 where appropriate) all the Protected Material that was returned or destroyed and (2)  
3 affirms that the Receiving Party has not retained any copies, abstracts, compilations,  
4 summaries or any other format reproducing or capturing any of the Protected Material.  
5 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
6 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
7 correspondence, deposition and trial exhibits, expert reports, attorney work product, and  
8 consultant and expert work product, even if such materials contain Protected Material.  
9 Any such archival copies that contain or constitute Protected Material remain subject to  
10 this Protective Order as set forth in Section 4 (DURATION).

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14. **BREACH**

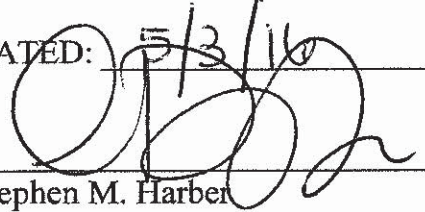
Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

**IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

DATED: 5-2-2016

  
Siamak Vaziri  
Mark Joseph Giannamore  
Joseph Miller  
Attorneys for Plaintiff, RODOLFO CRUZ

DATED: 5/3/16

  
Stephen M. Harber  
Barry L. Bookbinder  
Caitlin R. Johnson  
McCune & Harber, LLP  
Attorneys for Defendant, HOME DEPOT U.S.A., INC.

**FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

DATED: May 6, 2016

  
Hon. Kenly Kiya Kato  
United States Magistrate Judge

**EXHIBIT A****ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_, [print or type full name], of  
 \_\_\_\_\_ [print or type full address], declare under penalty of perjury  
 that I have read in its entirety and understand the Stipulated Protective Order that was  
 issued by the United States District Court for the Central District of California on [date]  
 in the case of \_\_\_\_\_ [Rodolfo Cruz v. Home Depot U.S.A., Inc.,  
 Case No. 5:15-CV-02139-DOC(KKX)].

I agree to comply with and to be bound by all the terms of this Stipulated  
 Protective Order and I understand and acknowledge that failure to so comply could  
 expose me to sanctions and punishment in the nature of contempt. I solemnly promise  
 that I will not disclose in any manner any information or item that is subject to this  
 Stipulated Protective Order to any person or entity except in strict compliance with the  
 provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for  
 the Central District of California for the purpose of enforcing the terms of this Stipulated  
 Protective Order, even if such enforcement proceedings occur after termination of this  
 action. I hereby appoint \_\_\_\_\_ [print or type full name]  
 of \_\_\_\_\_ [print or type full address and telephone  
 number] as my California agent for service of process in connection with this action or  
 any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA )

} ss.

COUNTY OF LOS ANGELES )

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action; my business address is 515 South Figueroa Street, Suite 1100, Los Angeles, California 90071.

On May 2, 2016, I served the foregoing document described as **STIPULATED PROTECTIVE ORDER**, on the interested parties by placing a true copy thereof enclosed in sealed envelope(s) addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

       BY MAIL: I served the documents by enclosing them in an envelope and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice of collection and processing of correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

       BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the office of the addressee(s).

       BY FACSIMILE TRANSMISSION: The facsimile machine I used complied with California Rules of Court 2.301 and no error was reported by the machine. Pursuant to rule 2.306(h), I caused the machine to print a record of the transmission, a copy of which is attached to this proof of service.

  X   BY ELECTRONIC DELIVERY: I caused the above-referenced document(s) to be delivered via electronic delivery, for delivery to the following address:  
jmillar@vazirilaw.com

  X   (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 2, 2016, at Los Angeles, California.

/S/

CAITLIN R. JOHNSON

SERVICE LIST FOR CRUZ, RODOLFO V. HOME DEPOT

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